

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHARLES W. ROUSEY, JR.
Claimant

VS.

RAY ROMANS
Respondent

)
)
)
)
)
)

Docket No. 1,004,816

ORDER

Claimant appealed the August 29, 2002 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

This is a claim for a May 21, 2002 accident, which occurred while claimant, Charles W. Rousey, Jr., was removing fence posts from a hay field. In the August 29, 2002 Order, Judge Frobish denied claimant's request for benefits after finding that the employer, Ray Romans, was engaged in an agricultural pursuit and that claimant was injured while working as a farm hand.

Mr. Rousey contends Judge Frobish erred. Mr. Rousey argues he was hired as Mr. Romans' maintenance man and not only worked on Mr. Romans' ranch but also worked on his other properties, including Mr. Romans' personal residence, chauffeured Mr. Romans around town and ran personal errands for Mr. Romans. Accordingly, Mr. Rousey contends the Workers Compensation Act should apply to this accident as he performed some work for Mr. Romans that was not related to Mr. Romans' ranch or agricultural pursuit.

Conversely, Mr. Romans argues claimant was hired as a farm hand and that he was injured performing the duties of a farm hand. Accordingly, Mr. Romans requests the Board to affirm the Order.

The only issue in this proceeding is whether respondent employed claimant to work in an agricultural pursuit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

In approximately January 2002, Mr. Romans hired Mr. Rousey to work on Mr. Romans' cattle ranch, where Mr. Romans was raising several hundred¹ head of cattle on approximately 1,100 acres. Although Mr. Romans also owned a car dealership in Independence, Kansas, and other properties, the facts indicate Mr. Rousey understood he was employed to work on the ranch, where he reported to work every morning.

Claimant described his job duties, as follows:

I just did a lot of fence maintenance, did welding on the machinery, whenever it would break down. I cleaned up pastures with a tractor, smoothing them out for the hay season.²

. . . .

I kept the property up. I kept trash picked up, branches kept up. I kept the fences up. I did whatever Mr. Romans asked me to do.³

. . . .

I painted them [fences], I washed them, I did whatever Mr. Romans wanted to do as far as maintenance on his property. I cleared pastures, I built fence, I picked up dead trees, you name it, I did it.⁴

In addition to the ranch work, claimant also drove Mr. Romans on errands, cut down some trees at Mr. Romans' personal residence and "move[d] some things around for him at his house."

On May 21, 2002, Mr. Rousey was injured while removing steel posts from a hay meadow.

¹ Claimant testified there were approximately 600 head of cattle, but coworker Jason Swindell testified there were only approximately 250 head of cattle on the ranch.

² P.H. Trans. at 7.

³ *Id.* at 10.

⁴ *Id.* at 21.

The preliminary hearing Order should be affirmed. The Board concludes claimant was hired to work as a ranch hand in an agricultural pursuit and that he was injured while performing the duties of a ranch hand. Accordingly, this accident is excluded from coverage under the Workers Compensation Act.⁵

WHEREFORE, the Board affirms the August 29, 2002 Order entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of November 2002.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Harry M. Bass, Attorney for Respondent
Jon L. Frobish, Administrative Law Judge
Director, Division of Workers Compensation

⁵ K.S.A. 44-505(a)(1).